

1 XAVIER BECERRA
2 Attorney General of California
3 KAREN W. YIU
4 Supervising Deputy Attorney General
5 CARA M. PORTER
6 Deputy Attorney General
7 State Bar No. 266045
8 455 Golden Gate Avenue, Suite 11000
9 San Francisco, CA 94102-7004
Telephone: (415) 510-3508
Fax: (415) 703-5480
E-mail: Cara.Porter@doj.ca.gov
Attorneys for Creditor
California Franchise Tax Board

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION

and

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

Affects PG&E Corporation
 Affects Pacific Gas and Electric Company
 Affects both Debtors

* All papers shall be filed in the Lead Case
No. 19-30088 DM

Case No. 19-30088 DM

Chapter 11

(Lead Case)
(Jointly Administered)

**CALIFORNIA FRANCHISE TAX
BOARD'S OBJECTIONS TO MOTION
FOR ORDER APPROVING
(A) PROCEDURES FOR FILING
OMNIBUS OBJECTIONS TO CLAIMS
AND (B) THE FORM AND MANNER OF
THE NOTICE OF OMNIBUS
OBJECTIONS [DOCKET NO. 7758]**

Hearing: June 24, 2020

Time: 10:00 a.m.

Courtroom: 17

Judge The Honorable Dennis J.
Montali

Creditor California Franchise Tax Board ("FTB") objects to the Motion for Order Approving (A) Procedures for Filing Omnibus Objections to Claims and (B) the Form and Manner of the Notice of Omnibus Objections ("Procedures Motion") [Docket No. 7758] on the grounds that the proposed objection procedures would relieve Debtors of providing supporting

1 evidence to their objections, potentially shift the burden of proof to FTB, and unreasonably
2 change the service requirement.¹

3 **ARGUMENT**

4 **I. THE PROPOSED OMNIBUS CLAIM OBJECTION PROCEDURES VIOLATE NINTH
5 CIRCUIT AUTHORITY AND BANKRUPTCY LOCAL RULE 9013-(D) BECAUSE THEY DO
6 NOT REQUIRE DEBTORS TO SUPPORT THE OBJECTIONS WITH EVIDENCE**

7 The proposed Omnibus Claim Objection Procedures enable Debtors to file an Omnibus
8 Objection without having to provide supporting evidence, in violation of Ninth Circuit authority
9 and Bankruptcy Local Rules.

10 First, in *Lundell v. Anchor Construction Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir.
11 2000) (underlined emphasis added), the Ninth Circuit requires an objector to support its objection
12 to claim with sufficient evidence:

13 [a] proof of claim is deemed allowed unless a party in interest objects under
14 11 U.S.C. § 502(a) and constitutes “*prima facie* evidence of the validity and amount
15 of the claim” pursuant to Bankruptcy Rule 3001(f). . . .

16 Upon objection, the proof of claim provides “some evidence as to its validity
17 and amount” and is “strong enough to carry over a mere formal objection without
18 more.” . . .

19 To defeat the claim, the objector must come forward with sufficient evidence
20 and “show facts tending to defeat the claim by probative force equal to that of the
21 allegations of the proofs of claim themselves.”

22 By alleviating Debtors of the requirement to present evidence, the Procedures Motion proposes a
23 procedure that is inconsistent with *Lundell*.

24 Second, Bankruptcy Local Rule 9013-1(d) requires that factual contentions in support of an
25 objection be substantiated by affidavits, declarations, or other evidence. Nonetheless, the
26 Procedures Motion states, “the Omnibus Objections *may* be accompanied by an affidavit or
27 declaration . . .” Procedures Motion, ¶ 4. The Procedures Motion does not *require* an affidavit,
28 declaration, or any other evidence in support of the Omnibus Objection. Thus, the Procedures
Motion proposes a procedure that does not follow Bankruptcy Local Rule 9013-1(d).

29 Accordingly, Debtors must support the Omnibus Objections with supporting evidence.

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¹ Capitalized terms not otherwise defined herein shall have the meanings as they are defined
32 in the Procedures Motion.

1 **II. IF DEBTORS PRESENT SUFFICIENT EVIDENCE TO OVERCOME THE PRESUMPTIVE**
2 **VALIDITY OF FTB'S CLAIMS, THE PROPOSED OMNIBUS CLAIM OBJECTION**
3 **PROCEDURES NONETHELESS IMPROPERLY SHIFT THE BURDEN OF PROOF TO FTB**

4 If an objector presents sufficient evidence to overcome the presumptive validity of a proof
5 of claim, then state law determines who bears the burden of proof. *Raleigh v. Illinois Department*
6 *of Revenue*, 530 U.S. 15, 26 (2000) (“the burden of proof on a tax claim in bankruptcy remains
7 where the substantive tax law puts it”). In the case of FTB’s tax claims, that burden of proof rests
8 with debtor. *See Consolidated Accessories Corp. v. Franchise Tax Board*, 161 Cal.App.3d 1036,
9 1039 (Cal. Ct. App. 1984). As stated by the United States Supreme Court, “placing the burden of
10 proof on the taxpayer reflects . . . the vital interest of the government in acquiring its lifeblood,
11 revenue, . . . the taxpayer’s readier access to the relevant information, . . . and the importance of
12 encouraging voluntary compliance by giving taxpayers incentives to self-report and to keep
13 adequate records in case of dispute” *Raleigh*, 530 U.S. at 21.

14 However, the proposed Omnibus Claim Objection Procedures improperly shift the burden
15 of proof to FTB, by requiring that any Response to include (i) a copy of **any other** documentation
16 or evidence to the extent not included in the proof of claim on which the claimant will rely in
17 opposing the objection and (ii) a declaration under penalty of perjury of a person with personal
18 knowledge of the relevant facts in support of the Response. Procedures Motion at ¶ 9(a).

19 To begin, this requirement precludes (or negates) the parties’ ability to conduct discovery
20 with respect to an Omnibus Objection or introduce other facts or documents in support of the
21 Response.

22 Next, because Debtors need not provide evidence in support of the Omnibus Objection, the
23 Omnibus Claim Objection Procedures would force FTB to prove up its tax claims that were
24 deemed presumptively valid. *Lundell*, 223 F.3d at 1039; *Los Angeles International Airport Hotel*
25 *Associates v. State Board of Equalization (In re Los Angeles International Airport Hotels*
26 *Associates*), 106 F.3d 1479, 1480 (9th Cir. 1997) (“Because the [tax] claim is not based upon a
27 writing, its proof of claim is entitled to the presumptive validity attributed to it by Rule 3001(f)”;
28 Fed. R. Bankr. P. 3001(f).

1 Additionally, while Bankruptcy Local Rule 9013-1(d) requires a party to support factual
2 contentions made in support of an opposition with declarations or affidavits, the Bankruptcy
3 Local Rules do not require that **all evidence** in response to a claim objection be filed with the
4 response. Instead, the Bankruptcy Local Rules only provide that, if there is a factual dispute
5 regarding a claim objection, the initial hearing on that claim objection is deemed a status
6 conference at which the bankruptcy court will not receive evidence. B.L.R. 3007-1(b).

Finally, FTB's claims are contingent claims, with an audit ongoing as to the tax years at issue. Until the audit concludes and the liability becomes final, the amounts of Debtors' tax obligations to FTB for these tax years are not yet due and payable. Nor will FTB have the requisite documentation to submit with its Response, as the Omnibus Claim Objection Procedures mandate.

III. THE PROCEDURES MOTION BOLDLY PROPOSES THAT DEBTORS MUST RECEIVE RESPONSE TO AN OMNIBUS OBJECTION BY THE DEADLINE TO BE “TIMELY”

14 The Omnibus Claim Objection Procedures states that a Response to an Omnibus Objection
15 “will be deemed timely served *only if* a copy of the Response is *actually received* by counsel for
16 the Debtors on or before the deadline to respond” to the Omnibus Objection. Procedures Motion
17 at ¶ 9(d) (emphasis added). This proposal is unreasonable because a Claimant responding to an
18 Omnibus Objection does not have control of whether counsel for the Debtors actually receives the
19 Claimant’s Response. Instead, a Claimant should only have to serve the Response by email or
20 mail on counsel for the Debtors *on or before the deadline to respond*.

CONCLUSION

22 Therefore, FTB respectfully requests that the Court sustain the objections to the Procedures
23 Motion.

24 | / / /

25 |||

1 Dated: June 16, 2020

Respectfully submitted,

2 XAVIER BECERRA
3 Attorney General of California
4 KAREN W. YIU
5 Supervising Deputy Attorney General

6 */s/ Cara M. Porter* _____
7 CARA M. PORTER
8 Deputy Attorney General
9 *Attorneys for Creditor*
10 *California Franchise Tax Board*

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CERTIFICATE OF SERVICE

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On June 16, 2020, I served the attached **CALIFORNIA FRANCHISE TAX BOARD'S OBJECTIONS TO MOTION FOR ORDER APPROVING (A) PROCEDURES FOR FILING OMNIBUS OBJECTIONS TO CLAIMS AND (B) THE FORM AND MANNER OF THE NOTICE OF OMNIBUS OBJECTIONS [DOCKET NO. 7758]** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING:

TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING:

<i>Counsel to Debtor</i>	Tobias S. Keller Jane Kim Keller Benvenutti Kim LLP	tkeller@kbkllp.com jkim@kbkllp.com
<i>Counsel for the Shareholder Proponents</i>	Joshua M. Mester James O. Johnston Jones Day	jmester@jonesday.com jjohnston@jonesday.com
<i>Counsel for the Administrative Agent</i>	Kristopher M. Hansen Stroock & Stroock & Lavan LLP	dmohamed@stroock.com mmagzamen@stroock.com lacalendar@stroock.com mmagzamen@stroock.com
<i>Counsel to the California Public Utilities Commission</i>	Alan W. Kornberg Paul, Weiss, Rifkind, Wharton & Garrison LLP	akornberg@paulweiss.com

1	<i>Office of the United States Trustee</i>	Timothy S. Laffredi	timothy.s.laffredi@usdoj.gov patti.vargas@usdoj.gov
2	<i>Official Committee of Unsecured Creditors</i>	Dennis F. Dunne Samuel A. Khalil Thomas R. Kreller Milbank LLP	cprice@milbank.com jbrewster@milbank.com skhalil@milbank.com tkreller@milbank.com
3	<i>Counsel for the Official Committee of Tort Claimants</i>	Eric E. Sagerman Cecily Ann Dumas Baker & Hostetler LLP	esagerman@bakerlaw.com cdumas@bakerlaw.com, hhammonturano@bakerlaw.com

4
5
6 **BY EMAIL on June 16, 2020** I served the above-referenced documents to the addressed:

7 **Stephen Karotkin**

8 Weil, Gotshal & Manges LLP
9 stephen.karotkin@weil.com
10 *Counsel to Debtor*

11 **Jessica Liou**

12 Weil, Gotshal & Manges LLP
13 jessica.liou@weil.com
14 *Counsel to Debtor*

15 **Matthew Goren**

16 Weil, Gotshal & Manges LLP
17 matthew.goren@weil.com
18 *Counsel to Debtor*

19 **Tom Schinckel**

20 Weil, Gotshal & Manges LLP
tom.schinckel@weil.com
21 *Counsel to Debtor*

22 **Bruce S. Bennett**

23 Jones Day
bbennett@jonesday.com
24 *Counsel for the Shareholder Proponents*

1 **BY MAIL** on **June 16, 2020** I served the above-referenced documents to the addressed:

2 **PG&E Corporation and Pacific Gas and Electric Company**

3 Attn: Janet Loduca, Esq.
4 PO Box 770000 77 Beale Street
5 San Francisco, CA 94105
Debtor

6 **Erez E. Gilad**

7 Stroock & Stroock & Lavan LLP
8 180 Maiden Ln.
9 New York, NY 10038-4982
Counsel for the Administrative Agent

10 **Matthew G. Garofalo**

11 Stroock & Stroock & Lavan LLP
12 180 Maiden Ln.
13 New York, NY 10038-4982
Counsel for the Administrative Agent

14 **Eli J. Vonnegut**

15 Davis Polk and Wardwell LLP
16 450 Lexington Ave.
17 New York, NY 10017
Counsel for the Collateral Agent

18 **David Schiff**

19 Davis Polk and Wardwell LLP
20 450 Lexington Ave.
21 New York, NY 10017
Counsel for the Collateral Agent

22 **Timothy Graulich**

23 Davis Polk and Wardwell LLP
24 450 Lexington Ave.
25 New York, NY 10017
Counsel for the Collateral Agent

26 **Brian S. Hermann**

27 Paul, Weiss, Rifkind, Wharton & Garrison LLP
28 1285 Avenue of the Americas
New York, NY 10019-6064
Counsel to the California Public Utilities Commission

1 **Walter R. Rieman**

2 Paul, Weiss, Rifkind, Wharton & Garrison LLP

3 1285 Avenue of the Americas

4 New York, NY 10019-6064

5 *Counsel to the California Public Utilities Commission*

6 **Sean A. Mitchell**

7 Paul, Weiss, Rifkind, Wharton & Garrison LLP

8 1285 Avenue of the Americas

9 New York, NY 10019-6064

10 *Counsel to the California Public Utilities Commission*

11 **Neal P. Donnelly**

12 Paul, Weiss, Rifkind, Wharton & Garrison LLP

13 1285 Avenue of the Americas

14 New York, NY 10019-6064

15 *Counsel to the California Public Utilities Commission*

16 **Office of the United States Trustee**

17 James L. Snyder

18 450 Golden Gate Avenue, 5th Floor Suite #05-0153

19 San Francisco, CA 94102

20 **U.S. Nuclear Regulatory Commission**

21 Washington, DC 20555-0001

22 Attn: General Counsel

23 **U.S. Department of Justice**

24 Attn: Danielle A. Pham

25 1100 L Street, NW, Room 7106

26 Washington DC 20005

27 *Counsel for United States on behalf of the Federal Energy Regulatory Commission*

28 **Paul S. Aronzon**

29 Milbank LLP

30 2029 Century Park East, 33rd Fl.

31 Los Angeles, CA 90067

32 *Official Committee of Unsecured Creditors*

33 I declare under penalty of perjury under the laws of the State of California the foregoing is true
34 and correct that this declaration was executed on June 16, 2020, at San Francisco, California.

35

Taryn Lovett

36 Declarant

37

/s/ Taryn Lovett

38 Signature

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